

301
Proo
Restricted
HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

8 November 1948
Yokohama, Japan

UNITED STATES OF AMERICA VS TAKAYOSHI SAKAINO

Review of the Staff Judge Advocate

1. The attached record of trial of Takayoshi Sakaino at Yokohama, Japan, from 7 January 1948 to 21 January 1948 by a Military Commission appointed by paragraph 2, Special Orders No. 305, Headquarters Eighth Army, dated 31 December 1947, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Takayoshi Sakaino
AGE: 35
RESIDENCE: 69 9 Sen, Aza
Kamifushiko, Oaza Biz-mura,
Memuro-Machi, Kawanishi-Gun,
Tokachinokuni, Hokkaido.
MARITAL STATUS: Married (four
children)
RELATIVES: Wife, father mother
EDUCATION: Six years elementary
school
VOCATION: Farming
MILITARY CAREER: Served in
Imperial Japanese Army,
Dec 1933 - May 1935; Aug 1938
- Dec 1940;
Rank: Sergeant Major

DATE OF CONFINEMENT: 2 July 47
DATE OF ARRAIGNMENT: 7 Jan. 48
PLACE OF TRIAL: Yokohama, Japan
PERIOD OF TRIAL: 7 Jan 48 -
21 Jan 48
DATE OF SENTENCE: 21 Jan 48
SENTENCE: CHL for life
CLEMENCY RECOMMENDED BY
COMMISSION: No

2. Synopsis of Charges, Pleas, Findings, Legal Sufficiency:

<u>Charge and Specification:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused at the time and place set forth in the specification hereto attached, did violate the laws and customs of war	NG	G	Yes
Sp: That on or about 26 May 1945 at or near Choeiji Shrine, Aza-Enomoto, Mobara-cho, Chiba-Ken, Honshu, Japan, the accused did willfully and unlawfully kill an unidentified American PW, by decapitating him with a sword.	NG	G	Yes

3. Summary of the Evidence:

a. For the Prosecution:

As to the Specification: Accused Takayoshi Sakaino was a Sergeant Major in the Imperial Japanese Army

Restricted

in May 1945 and served in the "Mabuchi" Company. An unidentified American flier who had been seriously injured in a B-29 crash was carried into the Choetji temple grounds in the early hours of the morning of 26 May 1945. The flier had sustained a fractured leg and possible other injuries and was unconscious. The accused later, on the same day, beheaded the said flier with his sword. The flier was in such a condition that it was necessary to hold his head up with a rope tied on to a bamboo pole. After the flier was beheaded the recruits in the "Mabuchi" Company bayoneted the dead body. The bones of the exhumed body disclosed marks made by some sharp instrument (R. 7-18, 20, 22, 25, 36, 43-45, 48, 49, 61, 63, 67, 70-78, 89, 102-106, 108-110, 113-115, 118-129, 132, 134-136, 138-140, 143-145, 147-149, 150; Ex. 1-9, 12; Ex 2, 3, 16, 17b, volume 2 Docket No. 26 (Mabuchi) page 240-271 volume 1, Ibid).

b. For the Defense:

The accused Takayoshi Sakaino, after having been duly advised of his rights by the commission, elected to take the stand and make a sworn statement in his own behalf. The substance of his testimony is as follows:

The accused left school at the age of 14 and farmed six (6) years (R. 187). He entered the Japanese Army in 1933 and served in China and returned to Japan in 1935, and was discharged. He was recalled in 1938 and returned to China in 1939 and discharged the second time in 1940 in (R. 188). He went in to the Army the third time in 1944 and became a Sergeant Major in April 1945. He saw two living fliers at the site of the B-29 crash, 26 May 1945. One was silent and the other was groaning (R. 189). Accused washed the face of one of the fliers because medical corpsmen did not do a good job. One flier had a broken thigh and a hole as large as a fist in his left groin which was bleeding. The other had a hole in his right temple and marks on his body. A Japanese Medical officer treated both fliers at 0430 hours. The Medical officer stated to the company commander "It is hopeless" (R. 190). The accused and a medical Sergeant put a splint and bandage on one flier's leg. He could hear one flier groaning and exhaling but he could not hear him inhaling. The accused did not kick the prisoners of war. Two other live fliers and one dead one were brought into the temple grounds and the live fliers were tied to the tree and blindfolded (R. 191). Later the two live fliers were taken away by the Kempei Tai (R. 191-192). The Kempei Tai commander told Mabuchi that the injured flier would die and that the company commander could deal with the others (R. 193).

The accused placed some straw on the ground for the flier to lie on after removing him from the temple at about 1310 or 1320 hours (R. 194). About 1430 hours he reported to the company commander that the flier was still alive. Captain Mabuchi directed the accused to relieve the flier of his suffering and the accused said if it was an order he (accused) would do it. Thereafter accused went to his quarters for his sword and got a pail of water (R. 195-196). The flier was propped in a sitting position with straw and his head was hanging in a way in which the accused could not cut it. He raised his sword but did not cut the first time. The flier was clothed in a thin undershirt. The accused could not get the feel of cutting the flier's neck (R. 197). Mabuchi suggested that the head be made higher and the accused tied a rope over the flier's jaw and over his head and Shiina put

Restricted
a bamboo pole through the loop and held up the head on the accused orders. Accused then put water on the blade and cut the neck of the flier (R. 198-199). After the beheading Mabuchi ordered the accused to dispose of the flier. He saw one soldier bayonet the body (R. 199). Accused supervised the burial of the beheaded flier about one hour after the beheading (R. 200). Accused asked a priest to come to the grave and the priest wrote "The grave of the unknown man" on a slab and placed it over the grave and conducted a burial service (R. 201-202).

Accused did not tell Yamamiya he was going to ask permission to behead the flier nor did he say the camp commander lacked the courage. He ate supper with the company commander that night. He left the army in September 1945. In October 1945 he received a letter from Mabuchi stating: that Mabuchi had ordered the killing; that accused name had come up; that Major Kubo and Colonel Tamura had been investigated; that accused should go to Tamura's residence in Ichimomiya; and that accused should keep the number of men involved as few as possible and to burn the letter (R. 202). Mabuchi wanted to see the accused at Colonel Tamura's residence before the accused went to General McArthur's headquarters. He started to Tamura's residence and on the train met a palmist who advised him to do as he thought and since some ex-Japanese officers had told him he would be badly treated by the U. S. Army. He got off the train without going to Tamura's. He went from place to place until he was apprehended on 27 June 1947 (R. 203-204). Yamamiya was going with a married woman and accused cautioned him that it was wrong and he asked the company commander to transfer Yamamiya which was done. After the war ended he threw his sword away (R. 205).

Cross Examination: Accused did not know of Mabuchi's arrest but did know he was being investigated (R. 205). He did not do anything for Mabuchi nor for his recruits who bayoneted the body. He told the priest to wait when the priest wanted to say a prayer over the grave. The priest did not try to stop the beheading. The accused did not remember who was in his room when he went after the sword (R. 206). He did not cut the flier on the back after the beheading and did not order Ishinori to bayonet the body (R. 207). He was worried about what punishment he might receive (R. 208). Accused was in charge of the guards at the temple grounds on 26 May 1945. There was no roped off space around the site of the beheading and the accused had no authority to order civilians away from the scene (R. 210-211). The accused requested the priest not to conduct the burial services (R. 211). He destroyed the sword after the war and did not have an axe at all (R. 212). The dead fliers were buried in one grave dug under the instructions of the accused (R. 213). The beheaded flier was buried with his hands tied behind him (R. 214). Accused considered he would be mistreated after he was confined and did not know Mabuchi was executed (R. 215). Accused did not suggest the fliers be beheaded. He did not kill the flier as if he were an enemy (R. 217).

Tadashi Toriyama: The victim had a large wound and was bleeding from his mouth and nose. The flier was alive at 0300 hours and at 1000 hours and was in great pain and had a splin on his left leg. The victim was moved between 0300 and 1000 hours (R. 162-164). A temple priest was present to perform a service and mark the grave. At 1230 the company commander spoke with Sakaino and the accused left and returned with a sword and cut off the victim's head. Accused's face

Restricted
expressed agony as he cut the neck (R. 164, 166, 170, 171).

Members of the Mabuchi company bayoneted the body after it was beheaded (R. 173-175; read from United States vs Hoya, Case Docket Number 169).

Junjo Takekuma (former soldier in the Mabuchi company). The witness saw a person beheaded about 1400 or 1500 hours, 26 May 1945 (R. 178). The accused beheaded the prisoner of war after he had poured water on the sword. Accused body was tense and he had a serious look on his face. The body was bayoneted after the beheading (R. 179). Accused's became angry when the children called him "Neck cutting Sergeant Major" (R. 180, 183, 184). Both soldiers and civilians witnessed the beheading (R. 181). The flier was wearing a thin under shirt at the time of the act (R. 182).

Yoshio Yonekura (former soldier in the Mabuchi Company): The witness saw the accused pour water on his sword twice and then behead the flier. At this time the accused's face was pale (R. 220). The accused shifted his feet several times before cutting. The witness saw Sakaino almost daily and he was troubled because he had to behead the flier (R. 221, 223).

Mashito Saijo (former Japanese policeman): Accused showed the witness Mabuchi's letter in which it was stated that Mabuchi gave the orders to behead the flier and gave the accused approval for traveling (R. 224).

Noboru Asano (Defense counsel for Mabuchi): Yamamiya told the witness there was no conversation between Mabuchi and Saikano (R. 229). Yamamiya did not say that accused thought it best to cut the flier (R. 230). Yamamiya said he did not hear any proposal to behead the flier (R. 231-232).

4. Opinion

The record is legally sufficient to support the findings of the commission. The allegations in the charge and specification are substantiated by ample and competent evidence. The commission was constituted by proper authority and had jurisdiction of the accused and the alleged offense.

The prosecution introduced evidence by exhibits consisting of affidavits of two members of the B-29 crew, photos of the remains of the deceased flier, a statement from one member of a recovery team that recovered the flyer's body, excerpts and exhibits of the Mabuchi Case (Case Docket No. 26), a statement from one former Japanese officer of the company in which the accused served at the time of the alleged offense. In addition to the documentary evidence the prosecution produced fifteen witnesses who testified before the commission of whom eleven were former Japanese soldiers who were either eye witnesses to the incident or were within the immediate vicinity at the time of the alleged offense.

The defense introduced six witnesses who testified before the commission. The accused testified under oath in his own behalf.

The defense evidence in no way refutes that of the prosecution.

Restricted

A careful scrutiny of the entire record of trial fails to reveal any error which affected any substantial right of the accused. The accused was ably defended by competent counsel, both Japanese and American. He cooperated in his own defense, produced witnesses in his own behalf, and took the stand and testified under oath in his own defense. The record reveals that he had a fair trial in every respect. The evidence supports the findings. There is no evidence that the accused was not sane either at the time of the commission or the alleged offense or at the time of the trial.

The accused pleads that the victim was suffering and death was certain and that the killing was to relieve his suffering and that the act was done on orders of his commanding officer; neither is a defense. He made no effort to obtain medical treatment or do anything else of a humane nature to alleviate the flier's pain and suffering which rebuts his claim that it was to relieve suffering.

5. Recommendations

There are no letters of clemency from any member of the commission or from others.

The accused was found guilty under one specification alleging wilful and unlawful killing of an unidentified flyer by decapitation. The commission sentenced him to confinement at hard labor for life. The sentence is legal.

The sentence to confinement at hard labor for life is not considered excessive and approval thereof is recommended.

There are no mitigating circumstances or justification for the offense.

Sugamo Prison, Tokyo, Honshu, Japan is the appropriate place of confinement.

6. A form of action designated to carry the foregoing recommendation into effect is attached hereto.

THOMAS L. DONNELLY
Lt. Col., Inf., Reviewer

I concur in general. The accused made no substantial protest or objection to a plainly illegal order to murder. He suggested the action (R 75). He very patently, before an appreciative crowd of civilians, willingly participated in the role of principal actor in the killing. In fact, there is evidence that the Commanding Officer did not discuss the beheading with accused beforehand (R229). It is plain that he exercised a "moral choice". His sentence is supported by valid and compelling evidence.

ALLAN R. BROWNE
Lt Colonel JAGD
Army Judge Advocate

Restricted